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STATE PASS USTR FOR AUSTR WEISEL, DBISBEE, JMCCHALE
COMMERCE FOR MHOGGE

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SUBJECT: SINGAPORE FTA REVIEW REVEALS PROGRESS IN SOME AREAS, DEAD
STOPS IN OTHERS

REF: 08 SINGAPORE 1168 (2008 FTA Review)

11. (SBU) Summary: Singapore and U.S. trade officials noted progress in resolving outstanding trade issues during an annual review of the 2004 U.S.-Singapore Free Trade Agreement (FTA). The review saw positive developments in the processing of two textile short supply requests, initiatives under the FTA's environmental plan of action, and the final resolution of one intellectual property rights issue. The review also covered new ground with a proposal to collaborate on labor issues, and discussion of a new barrier to providing educational services in Singapore. Discussions foundered on customs record keeping requirements and rules of origin issues as they related to optical components as their resolution would require fully reopening the agreement. The review also clarified questions regarding Singapore's broadband initiative and agriculture policy toward market access for U.S. beef. End Summary.

12. (SBU) U.S. and Singapore trade officials conducted the fifth annual review of the U.S.-Singapore Free Trade Agreement (FTA) December 4 (December 3 Washington time) via digital videoconference. Assistant U.S. Trade Representative Barbara Weisel led the discussion for the U.S. side, with Deputy Secretary KOH Lin-Net of the Ministry of Trade and Industry leading for Singapore. Ms. Weisel said she was pleased that there had been movement toward resolving some longstanding issues related to the FTA in the past year.

Textiles

-- Short Supply Requests (GOS)
-- Tariff Preference Level (TPL) proposed changes (GOS)
-- Customs and Border Protection (CBP) proposed changes (GOS)

14. (SBU) Gail Strickler, Assistant USTR for Textiles said that USTR had signed off November 24 on Singapore's second short supply request for textile imports made since the FTA went into effect. She expected that after a 60-day consultation and layover period USTR would be able to implement the changes, barring any objections raised during the process.

15. (SBU) On a third short supply request, Ms. Strickler said that USTR was moving ahead, but noted complicating factors in that a number of items identified in Singapore's request were not recognized as such in the Harmonized Tariff System (HTS). The U.S. does not differentiate fabrics made from bamboo and recycled polyester when the final product cannot be considered distinct from similar fabrics. Strickler emphasized the complexity of the request procedure, and the amount of work and interagency coordination necessary to approve a request. She conveyed her hope that Singapore's short supply requests were important for Singapore's

textile exporters, noting that Singapore had yet to use any of the additional export benefits from its first short supply request. Mr. ANG Kin Leong, MTI Senior Assistant Director, said the third request was meant to be forward-looking as Singapore textile manufacturers were looking to use more environmentally-friendly fabrics in the future.

16. (SBU) DepSec Koh brought up Singapore's long-standing request to increase tariff preference levels included in the FTA, reiterating the importance to the commercial viability of Singapore's textile manufacturers. She said that Singapore's industry was small and accounted for only a little more than one percent of U.S. imports. She asked USTR to convey its concerns to the U.S. textile industry and request their support.

17. (SBU) Regarding CBP's proposed rulings on two textile matters that may affect Singapore, Strickler said that USTR had passed all technical information to CBP and hoped to see a decision soon. She emphasized that CBP is an independent agency with its own procedures.

Government Procurement

-- Implementation of Buy American provisions (GOS)

18. (SBU) DepSec Koh said that Buy American provisions in the American Recovery and Reinvestment Act (ARRA) had impacted Singapore companies doing business in the United States. Koh said that dealing with government procurement at the state level was already difficult and that adding in the Buy American provisions made it even more complex. She mentioned a Singapore company called Terrace

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Global that had bid on a project in Phoenix, AZ, that was delayed for two months due to uncertainty over how the Buy American provisions would affect the investment. She requested a list of contacts at the state level to facilitate participation in procurements, and offered to give a list of priority states where Singapore companies were most interested. Jean Grier, USTR Senior Procurement Negotiator, responded that the United States had been careful in the drafting of the ARRA to ensure we abided by our international commitments. Grier provided the website www.naspo.org, the website of the National Association of State Procurement Officers, which provides contact information for each state. She said USTR could consider developing a list of state contacts for government procurement, but in the meantime Singapore officials could contact USTR for any assistance with individual states.

Education Services

-- Private Education regulatory changes (USG)

19. (SBU) Amanda Horan, USTR Director for Services and Investment, explained U.S. concerns over new registration criteria for private education providers in Singapore. While noting that the United States does not object to Singapore's efforts to raise educational quality standards through the new registration criteria, Horan expressed concern at the lack of transparency in how the new criteria were being applied. Singapore's Ministry of Education (MOE) had denied applications from two U.S. universities to extend educational services in Singapore but had not explained what the universities had lacked nor what they would need to improve in order to qualify. YAH Shze Min, MTI Senior Assistant Director, explained that in recent years the education landscape in Singapore had expanded rapidly resulting in a wide variation in standards. She countered that the criteria for approving private education providers was clear and provided online at www.moe.gov.sg/events/private-education-public-consultation/. Yah asserted that the MOE considered a number of factors including the status of the foreign university, its track record in providing services in other countries, national rankings, GMAT scores, and graduation rates. She insisted the criteria were applied transparently and objectively to all universities, including Singapore schools. Horan explained

that while the criteria themselves may be clear, the specific reasons why MOE rejected the two schools remained unclear despite several requests to MOE for clarification. The two universities in question had been providing services in Singapore for ten to fifteen years respectively without complaint. The two sides agreed to continue to discuss U.S. concerns.

Environmental Cooperation

- Arowana Dragonfish market access (GOS)
- Review of activities completed in 2009 (USG/GOS)

¶10. (SBU) Singapore reiterated its request for market access for Singapore's farm-raised Arowana Dragonfish whose exports to the United States are restricted under the Endangered Species Act. David Brooks, USTR Director for Environment Affairs affirmed that progress had been made to find a means to support Singapore's efforts to meet the standard in the Endangered Species Act that allows imports of endangered species only if it serves to assist in the conservation of that species. Dr. Roddy Gable, Chief of the Division of Management Authority at the U.S. Fish and Wildlife Service (FWS) International Affairs office, stated that Conservation International, a non-profit organization soon to open an office in Singapore, could facilitate linking Arowana producers in Singapore with wild Arowana conservation programs in the region. (Note: There are no wild Arowana in Singapore and no local conservation opportunities.) Singapore will provide a point of contact to USTR that can be forwarded to FWS and Conservation International to begin discussing how to incorporate Singapore in regional conservation efforts.

¶11. (SBU) On environmental cooperation, Alan Lowther from the State Department Office of Environmental Policy read a statement previously agreed by Singapore and the United States outlining environment cooperation activities completed in 2009. Completed activities included: a March digital video conference between the Environmental Protection Agency (EPA) and the Singapore National Environment Agency (NEA) regarding energy efficient laboratory initiatives (Labs 21); an NEA study visit to the United States regarding terrain decontamination, air quality management and hazardous waste management; and Singapore participation in a

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regional dialogue on trade in wood products that was held in Jakarta in September. The United States plans to continue the regional dialogue on trade in wood products and would likely organize another event in April or May 2010, USTR's Brooks stated. NEA is interested in expanding cooperation on air quality management to include sending an NEA official on a temporary detail to a U.S. facility. NEA also intends to provide EPA with its proposal for Labs 21 cooperation in the first quarter of 2010, said LEE Choon Phua, Assistant Director at the Ministry of Environment and Water Resources.

¶12. (SBU) Singapore and the United States continue to discuss opportunities to arrange training seminars in Singapore on wildlife crime investigations and responding to marine pollution caused by ships. The United States and Singapore will hold the biennial review of the 2008-2010 environment Plan of Action in 2010 and will revise and update the Plan of Action to take effect 2011-2012. Subsequent biennial reviews will be held each even-numbered year.

Labor

¶13. (SBU) Carlos Romero, Deputy Assistant USTR for Labor Affairs, said that the United States and Singapore had had little cause for interaction on labor issues in the past, but saw the bilateral cooperation on environmental issues under the FTA as a model for discussing labor issues. There are opportunities to learn from each other on handling labor issues, Romero said. More importantly, Singapore, the United States and other countries with similar views on labor could speak with one voice in multilateral fora to other countries with lesser developed labor regimes on labor issues as they relate to trade. Susan Hahn of the Department of Labor offered

to meet with Ministry of Manpower counterparts on areas of mutual interest. SIM Li Chuan, Head of International Labor at the Ministry of Manpower, said he looked forward to any cooperative activities between the two Departments.

Intellectual Property Rights (IPR)

- "Simulcasting" issue resolution (USG)
- Deterrent penalties for IPR violations (USG)
- Collaboration between IPRB and IPR rights holders (USG)
- Pre-discovery process for authorized agents (USG)
- Cooperation from ISPs in addressing Internet piracy (USG)
- Anti-camcording legislation (USG)

¶14. (SBU) Simulcasting: Rachel Bae, USTR Director for Intellectual Property Rights, praised the successful conclusion of "simulcasting" fee negotiations between the recording industry and MediaCorp, Singapore's dominant radio broadcaster. MediaCorp became the first Singapore broadcaster to conclude a licensing agreement with the recording industry to simultaneously broadcast radio transmissions over the Internet, bringing to a close a long-standing FTA issue.

¶15. (SBU) Deterrent Penalties: USTR conveyed long-standing industry concerns that penalties for end-user piracy are insufficient to deter copyright infringers, which is inconsistent with FTA obligations. Bae cited the outcome of the PP v PDM case, in which the maximum fine faced by Singapore firm PDM was S\$40,000 while the value of their copies of infringing software was more than S\$78,000. Maximum fines for copyright violations should be increased and brought in line with penalties for other forms of IPR violations (e.g., trademark infringement), Bae said. Senior Assistant Director at the Intellectual Property Rights Office of Singapore (IPOS) Kelvin Sum disagreed that Singapore does not set high enough penalties for end-user piracy and asserted that the fines in that specific case did not indicate a trend and were determined by mitigating factors, such as PDM's cooperation with the investigation.

¶16. (SBU) Bae said that according to industry, the Attorney General's Chambers (AGC) has dismissed other similar end-user piracy cases, so there is no way to determine a trend. Daren Tang of the AGC said that prosecution of such cases depends on the evidence presented and that the GOS does not, as a policy, choose not to prosecute. Bae requested more information about why the AGC dismissed end-user piracy cases against Singapore firms Boonty and Wang & EF Tan Associates. IPOS and AGC agreed to try to provide additional information, but said it was unlikely they could provide more details because of client confidentiality issues.

¶17. (SBU) Collaboration: The Intellectual Property Rights Branch (IPRB) of the Singapore Police Force has been conducting raids and

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collaborating with industry on IPR cases, Sum stated. Sum disagreed with statements by industry that IPRB does not have enough resources to actively pursue IPR cases. Industry has said that IPRB is rejecting cases, even after industry has conducted its own investigation and provided IPRB with evidence of infringement. Bae noted that the collaborative enforcement model that Singapore advocates puts the onus on rights holders to investigate and develop cases, which is inconsistent with the FTA, which states that non-criminal actions are not the primary means to enforce IPR laws. Sum said that as with any government agency in Singapore, IPRB is very busy and that IPRB and the AGC use prosecutorial discretion to determine which cases to prioritize. Bae suggested that the issue of enforcement might be best covered in a separate follow-on DVC focused entirely on IPR issues. IPOS indicated they supported the DVC suggestion.

¶18. (SBU) Pre-Discovery Process: Bae sought clarification regarding the ability of authorized agents acting on behalf of rights holders to apply for pre-action discovery in cases of Internet piracy. Bae cited the case of Odex Pte Ltd v Pacific Internet Ltd, in which Singapore courts denied an authorized agent's request and said the judge's decision highlighted a possible

deficiency in Singapore law. Sum and Tang stated that Singapore has a pre-established process that does not allow authorized agents to apply for pre-action discovery in their own name. However, they said that if the agent in the Odex case had requested pre-action discovery and sued in the name of the principals, the copyright holders, their request probably would have been granted. Bae said USTR would inform industry of Singapore's policy as stated in the review.

¶19. (SBU) Internet Piracy: Bae also raised concerns that internet service providers (ISPs) in Singapore are not responding to infringement notifications submitted by the recording industry. USTR and the GOS agreed that this is an issue between commercial parties, but Bae noted that the recording industry is seeking assistance through the FTA process because they must maintain a positive working relationship with ISPs, and for that reason are reluctant to initiate lawsuits as a means to force the ISPs to respond. Sum said that IPOS might be able to consider some way to encourage collaboration between ISPs and rights holders, but suggested that IPOS and USTR might discuss it further in later conversations or the follow-on DVC.

¶20. (SBU) Anti-Camcording: Bae inquired whether Singapore would consider enacting anti-camcording legislation, noting that neighboring countries like Thailand are moving forward with laws to address unauthorized camcording in movie theaters and other public venues. Singapore lacks legislation that deals with unauthorized camcording or persons caught camcording. Sum stated that the two or three cases of camcording in Singapore do not indicate a trend. Singapore will study the camcording laws in other countries before considering its own legislation. Singapore already has laws that address other violations, such as reproduction and distribution of pirated films, Sum added.

Standard Drug List

¶21. (SBU) Assistant USTR Weisel said that she understood that the Singapore Ministry of Health was working with industry to have fuller discussions on the means by which the Ministry chooses pharmaceutical products to include on its Standard Drug List (SDL) of drugs considered effective and should be made affordable to patients through subsidies. She said the newly instituted annual review of the SDL was a welcome step and encouraged the Ministry to continue to engage in dialogue with industry stakeholders. Suvarin Chaturapit, Director at the Health Sciences Authority, said that the Ministry would continue to review the SDL. She noted that health care professionals had the key role in promoting drugs to be included on the list, and recommended that companies speak to health professionals about the benefits of their products to encourage consideration of their inclusion on the SDL.

Telecommunications

¶22. (SBU) Rachelle Lee, Assistant Manager in the Infocomm Development Authority, gave an update on the rollout of Singapore's next generation broadband network. She relayed that the operating company, Nucleus Connect, would begin to deploy services during the first half of 2010 with all universal service obligations completed by 2013. The broadband provider would offer last-mile access at between 100 mps and one gigabit/second, virtual private networks and

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virtual leased lines. Jonathan McHale, Deputy Assistant USTR for Services, requested a copy of IDA's economic analysis that recommended the use of government subsidies to support development of the new network.

Agriculture

-- Market access for U.S. beef

¶23. (SBU) David Bisbee, Deputy Assistant USTR for Southeast Asia and the Pacific, noted that at the 2008 FTA review Singapore

officials had said they were conducting a risk assessment of U.S. beef and beef products. According to the World Organization of Animal Health (OIE) U.S. beef is considered safe; any restriction on its import must be accompanied by a scientifically-based risk assessment that justifies stricter standards. Oscar Ferrera, International Trade Specialist at the U.S. Department of Agriculture (USDA), said he had seen no information on Singapore's risk assessment in the past year and offered any assistance necessary to help complete it. With a risk assessment in hand, USDA could better address Singapore's concerns. Adrian Goh, Senior Assistant Director at MTI, said that as a food importer Singapore had no interest in suspending imports any longer than necessary, but that Singapore's Agri-Food and Veterinary Authority (AVA) had to ensure the safety of the country's food supply. He said that Singapore had already reopened the market to boneless beef from cows less than 30 months of age, but has not seen sufficient evidence that bone-in beef is of no additional risk and therefore continued to block imports. AVA was not present at the FTA review, but DepSec Koh said that Singapore could not commit to a timeline to complete the assessment. Koh agreed that AVA and USDA should hold discussions on the topic.

Dispute Settlement

¶24. (SBU) Derek Loh, State Counsel in Singapore's Attorney General's Chambers, thanked USTR for its proposal to establish a list of panelists for a five-person dispute settlement panel. Under the proposal, each side would nominate five panelists, then meet to review and narrow the list to only five total. Both sides would regularly review the panel.

Customs

-- Record Keeping Requirement

¶25. (SBU) TAY Chng Yeow, Director (FTA) at the Ministry of Finance, pitched a change in CBP record keeping requirements of importation records from five to three years. He explained that the requirement was a particular burden on small and medium-sized enterprises. DepSec Koh said most of Singapore's FTAs included only a three year requirement, and said that other countries, including members of the TPP Agreement, also had three year record keeping requirements. Deputy AUSTR Bisbee said that USTR had consulted CBP and Treasury regarding the requirement, but both agencies reiterated that the five-year requirement has been an important component of U.S. FTAs and should stand as is. Given that the requirement had been agreed upon at the original FTA negotiations, USTR was not inclined to reopen the agreement to grant Singapore's request.

Rules of Origin

-- Optical Components

¶26. (SBU) Deputy AUSTR Bisbee said USTR had examined Singapore's proposal to change the rules of origin for imports of optical components from Singapore, but that the rules of origin in the FTA had been carefully crafted and represented an integral part of the overall balance of the agreement. The process for changing rules of origin was a lengthy and complicated one and not one that USTR would embark on lightly. DepSec Koh said that although Singapore had agreed to the rules of origin for these products, Singapore industry now found the rules onerous and was unable to export with the current rules in place. The U.S. took note of these views, but maintained that the U.S. is not in a position to consider revising the rules of origin at this time. Singapore was invited to provide additional information to USTR regarding any changes in the industry that might have a bearing on this issue.

¶27. (U) USTR cleared this cable.

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SHIELDS